Columbus Maintenance and Service Co., Inc. *and* Service, Hospital, Nursing Home and Public Employees International Union, Local 47, AFL-CIO-CLC.

Columbus Maintenance and Service Co., Inc. *and* Service, Hospital, Nursing Home and Public Employees International Union, Local 47, AFL-CIO-CLC, Petitioner. Cases 9-CA-17855 and 9-RD-1042

15 March 1984

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 30 June 1983 Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Columbus Maintenance and Service Co., Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following after paragraph 2(c).

"IT IS ORDERED that the election conducted on February 6, 1982, among the employees of Columbus Maintenance and Service Co., Inc., Columbus, Ohio, be set aside and a new election be held."

[Direction of Second Election omitted from publication.]

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. The charge in Case 9-CA-17855 was filed by Service, Hospital, Nursing Home and Public Employees International Union, Local 47, AFL-CIO-CLC, the Union, on January 12, 1982. The complaint was issued on April 8, 1982. As amended at the hearing herein, it alleges that Columbus Maintenance and Service Co., Inc.,[1] Respondent, engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act in that assertedly since on or about November 16, 1981, by written request and about December 23, 1981, by oral request, the Union has requested Respondent to furnish the Union with the information contained in paragraph (i) below and since on or about December 23, 1981, has orally requested Respondent furnish the Union with the information contained in paragraphs (ii) and (iii) below:

(i) Telephone numbers of said bargaining unit employees.

(ii) Hours of work of said bargaining unit employees.

(iii) Addresses of jobsites where said bargaining unit employees perform work.

It is further alleged that such information is necessary for, and relevant to, the Union's performance of its functions as the exclusive collective-bargaining representative of Respondent's employees. The complaint originally spoke only to the oral request made on Respondent on December 23, 1981. Respondent denies the allegations.

By order entered June 18, 1982, Case 9-CA-17855 was consolidated and set for hearing with Case 9-RD-1042.[2] The latter involves an objection filed May 24, 1982, by the Union to alleged conduct which assertedly affected the results of an election held on February 10, 1982. The alleged objectionable conduct is the same as that alleged in the above-described complaint.[3]

---

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge that Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to furnish the Union with the telephone numbers of employees in the unit, as well the information pertaining to the unit employees' hours of work and jobsite addresses. We note that after the filing of the decertification petition, the Union learned that there was a large number of newly hired employees of whom it was previously unaware. The telephone numbers of all unit employees were requested, in part, because the Union believed that many of the new employees were not receiving the proper wage rate or insurance benefits and wanted to contact the new employees for the purpose of handling possible grievances. As the Union's request was related to its role of bargaining representative and not solely to its campaign needs, we agree with the judge's conclusion that Respondent violated Sec. 8(a)(5) and (1) by refusing to supply the requested telephone numbers. While we do not condone Respondent's withholding the names and addresses of unit employees requested by the Union until after an earlier unfair labor practice charge was filed (subsequently withdrawn), we disavow the judge's characterization of this conduct as unconscionable.

[1] The evidence or record indicates that the correct name is Columbus Maintenance and Service Co., Inc.

[2] G.C. Exh. 1(f). This order, entered by the Regional Director for Region 9, was approved by the Board by order entered July 12, 1982. G.C. Exh. 1(h).

[3] As set out in the report on objections, G.C. Exh. 1(f),

> The Union contends that the information requested was necessary to enable it to contact bargaining unit employees in order to campaign effectively. The Union further asserts that the addresses of unit employees furnished in accordance with the requirements of *Excelsior Underwear, Inc.*, 156 NLRB 1236, and *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759, were inadequate to allow effective campaign contact due to the marginal literacy of many unit employees. The Employer contends that the alleged unfair labor practices in Case No.

Continued

A hearing in these consolidated cases was held in Columbus, Ohio, on November 15, 1982. On the entire record in this case, including my observation of the demeanor of the witnesses and consideration of the briefs filed by General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation with an office and place of business in Columbus, has been engaged in providing janitorial services to various customers located in Franklin County, Ohio. The complaint alleges, the Respondent admits, and I find that, at all times material herein, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Since 1966 the Union has been the designated exclusive collective-bargaining representative of certain of Respondent's employees. Respondent and the Union have had successive collective-bargaining agreements, with the most recent being effective between January 1, 1979, and December 31, 1981. As here pertinent, that agreement includes the following:

> ARTICLE 1—RECOGNITION, UNION SHOP AND CHECKOFF
>
> *Section 1. Recognition.* The Employer recognizes the Union as exclusive collective bargaining agent for all its cleaners but excluding any employee in the foregoing classification where such employee is the only person engaged for an individual account and is working fewer than twenty (20) hours per week, and also excluding office employees and supervisors as defined in the Labor Management Relations Act of 1947, as amended.
>
> *Section 2. Union Shop.* It is a condition of employment that all employess of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall, on the thirty-first day following the execution date of this Agreement, become and remain members in good standing of the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first day following the beginning of such employment, become and remain members in good standing in the Union. Any employee failing to comply with the provisions of this Article shall be terminated from employment upon written request to the Company from the Union.
>
> *Section 3. Checkoff.* The Company agrees to deduct from the wages of the employees covered by this Agreement who authorize such deductions in writing to the Company all initiation fees, assessments and dues on the first payday of each month and to forward it to the Union no later than the fifteenth (15) day of each month. The Union agrees that the Company is not liable for clerical errors in the administration of this Article. Deliberate omissions shall not be considered as a clerical error.
>
> . . . .
>
> ARTICLE XX—UNION REPRESENTATION
>
> *Section 1.* Authorized representatives of the Union shall be permitted to investigate conditions to determine that this Agreement is being properly performed. No such investigation shall be conducted at a time which is calculated to unreasonably interrupt the duties of any employee, and shall not be conducted on working premises without the Employer's permission first obtained.

Under the agreement, dues checkoffs were made for 26 of Respondent's employees, the only employees of Respondent that the Union was aware of.

On October 30, 1981, an employee of Respondent, Nancy Carle, filed a petition for decertification in Case 9-RD-1042, indicating therein that Respondent had 190 "full-time and regular part-time janitors (as per the contract)."

The Union then forwarded[4] the following:

> November 16, 1981
>
> Jack Worrel
> Columbus Maintenance Service
> 322 West State Street
> Columbus, Ohio 43215
>
> Dear Mr. Worrel:
>
> Please forward to this office the names, addresses and telephone numbers of all bargaining unit employees. This information is necessary in our role as Collective Bargaining Representative for the investigation of potential grievances.
>
> Thanking you in advance for your cooperation in this matter, we remain—
>
> Sincerely yours,
> Gregory J. Lavelle
> House Counsel
> Joseph E. Murphy
> President

And in response Respondent forwarded the following dated November 23, 1981:

9-CA-17855, if they occurred, would not tend to interfere with employee free choice in the election, since the information allegedly requested was relevant only to the Union's ability to process grievances which may have arisen during the term of the collective-bargaining agreement which expired on December 31, 1981.

[4] In February 1981 the Union also requested Respondent to supply the names and addresses of bargaining unit members.

Mr. Joseph E. Murphy, President
Local 47, Service, Hospital, Nursing
Home and Public Employees Union
2201 Superior Avenue, Room 201
Cleveland, Ohio 44114

Dear Mr. Murphy:

This will acknowledge receipt of your letter dated November 16, 1981. We have no problem with forwarding to you reasonable information which you requested. However, due to the size of our work force and the rate of turnover that we have experienced, it will take a little time to compile this information. We hope that the delay does not cause you any inconvenience.

Very truly yours,
COLUMBUS MAINTENANCE & SERVICE CO., INC.
Jack W. Worrel, President

On December 14, 1981, the Union filed the following charge in Case 9-CA-17781 alleging that Respondent, Columbus Maintenance and Service Co., Inc., was violating Section 8(a)(1) and (5) since:

> On or about November 30, 1981, and at all times thereafter, it, by, its officers, agents and representatives, has refused to bargain collectively with Service, Hospital, Nursing Home and Public Employees Union, Local 47, a labor organization chosen by a majority of its employees in an appropriate unit, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, by refusing to supply information necessary in our role as Collective Bargaining Representative.

By letter dated December 15, 1981 the Regional Director advised Respondent of the charge filed the day before.[5]

Respondent forwarded the following, dated December 16, 1981:

Dear Mr. Murphy:

Enclosed are names and addresses of employees who are in the unit.

Enclosed were 7 sheets with a total of 169 names and addresses.

A Board hearing (rescheduled from November 13, 1981) on the question of voter eligibility was set for December 23, 1981. It appears that it was not necessary to go on the record since the parties reached an agreement. (Jt. Exh. 3(d)(1).) The agreement refers to a list which was attached thereto. (Jt. Exh. 3(d)(3)). This 7-page list gives 148 names, and, as here pertinent under "LOCATION(S) OF WORK" specifies, to give a few examples, 22 E. Gay St. WLMH-TV, Municipal Bldg., BancOhio Service Ctr., Grange Mutual, Int. Harvester Credit, Electric Co., Administration Bldg., BancOhio, Town St. Xerox, BancOhio Opr. Ctr., 145 N. High, Dollar Savings, Gay St. & 513 Rich St., First Investment, and "CMS and Special Jobs."[6]

Four witnesses testified regarding what allegedly occurred at the December 23, 1981 meeting, which lasted approximately 7 hours. The first, Lavelle, testified that at this meeting he repeated his request for the telephone numbers of the employees, and additionally he requested the starting and quitting times of the individual employees and their job location; that, in response to a question of one of Respondent's attorneys, he did not request Respondent's customers' telephone numbers at the meeting rather than the employees' because customers' numbers are readily available in the telephone book and he campaigns with employees and not Respondent's customers; that he received a general statement of hours during which Respondent's work force was employed but it was worthless for his purpose since the Union would have to know the starting and quitting times to be able to contact unit members at jobsites;[7] that while the Union could have figured out where some of the jobsites were with the location descriptions on Joint Exhibit 3(d)(3), some of the descriptions, i.e., Radio Shack, were not sufficiently detailed to allow such a determination; that Joint Exhibit 3(d)(3) was used to determine eligibility and it was discussed early in the meeting; that close to the end of this meeting he specifically requested the names, addresses, and telephone numbers and starting and quitting times at the jobsites and the jobsite locations; that before he signed the agreement on December 23 he announced that he was going to file charges because he did not receive the requested information; that he

> . . . needed to get the telephone numbers because, essentially sic that's that only way you can get hold of employees in the janitorial service. In Cleveland I handle all the arbitrations under about 15 or 20 janitorial contracts. And in the industry, basically, people work part time. They have a day time job, so you can't get them in the day. You can't get them at the job site because you don't know where they're working. So the only way to really get hold of them is to call them up. They don't answer letters. I don't know how many letters come back "left no fowarding address". . . .[8]

[5] It was not established whether the Union itself served Respondent with a copy of the charge.

[6] Excluding repetitions, this is what appeared on the first page. The following, excluding repetitions, appeared on the remaining pages. AFSCME, Council 8, Kinnear Corp., Burroughs Corp. Graybar Electric and Plumbers Union, Barnebey Cheney, Cont Can, Union Carbide & Castle Metals, I.P.M. Corp. Metal Container, Cols Mental Health, Int. Harvester, West and BancOhio, Georgeville, BancOhio-BancSupply, Buckeye Telephone, Mid Ohio Health, Planned Parenthood, Northland Mall, Radio Shack, Bill Swad Chev., Columbus Gas Transmission, Ohio AFL-CIO, Hughes Peters, A. C. Delco, BancOhio, Henderson & Freedom Fed. Bethel, Philips Roxane, Star Forms, Philips Roxane & Elford, T & C Realty, Freedom Fed. Kingsdale, BancOhio, Bride Rd., and Dollar Savings-Brice Rd.

[7] Lavelle conceded that he may have been mistaken about the exact times he was told. His point, however, was that the times given were in general terms and, as conceded by Respondent's vice president, Barbara Harper, the Union would have to know the individual employee's working hours if it wanted to contact him at the jobsite before or after work.

[8] At another point Lavelle testified:

Continued

and that he could not have obtained phone numbers by looking in the telephone directory for names and addresses of employees supplied by Respondent since

> . . . number 1, phone numbers change. Through the course of going through arbitrations, you'll see a person's phone number change one, two, three times. Another thing, a lot of people in this industry don't have a phone. They'll have someone who accepts their calls that the company would know. Third thing, this is predominately female industry. Women sometimes don't have their phone numbers listed or would only list their first initial. So it's very difficult to find them.

The Union's Columbus business agent, William Catling, testified that at the December 23 meeting he believed he heard Lavelle request the "names, addresses, telephone numbers, place of employment, jobsites, and hours worked"; that while he was not given the list of employees' names and addresses and did not attempt to trace Respondent's employees' telephone numbers, he had attempted to obtain employees' phone numbers in the past but his rate of success was very poor because "they are listed under maiden names, different other people than their names and some of them aren't listed. And some of them you do find the names have changed, the numbers have changed and they're not listed"; and that in the janitorial industry the rate of turnover is in the neighborhood of 30 percent a month.

The third witness to take the stand, Harper—who is Respondent's vice president and general manager and who is responsible for the "operation of the company"—testified that at the December 23 meeting Lavelle asked for the telephone numbers of Respondent's customers and not Respondent's employees; that about 50 percent of the time Respondent's employees do not have a phone and so the employee gives a relative's or a neighbor's telephone number to Respondent; that in the 16 years she has been with Respondent, a total of about 50 employees have requested that their telephone number not be given out; that as a matter of policy Respondent does not give out employees' telephone numbers; that many (Harper testified "less than half") of its employees are women and a good number of those are married and may or may not have a telephone number listed in their name; that at the December 23 meeting Lavelle did not ask for individuals' work hours but rather wanted to know the hours Respondent's employees worked, and he was advised between the hours of 5 and 10 p.m.; that Respondent's employees work when the offices are closed and the employees have a key or are admitted by a guard; that unauthorized people are not allowed in these buildings; that employees begin working at the jobsites at 5 p.m., 5:30 p.m., or 6 p.m. and they leave the jobsites at 9 p.m., 9:30 p.m., or 10 p.m. but those who start at 5 p.m. would not necessarily leave work at 9 p.m., and, therefore, the Union would have to know the individual employees working hours if it wanted to contact him at the jobsite before or after work; that Respondent never gave the Union Respondent's employees' telephone numbers but Joint Exhibit 3(d)(3) which was used to determine eligibility gives some of Respondent's customers' addresses; that Respondent ignored the Union's February 1981 request for the names and addresses of Respondent's employees; that she saw the Union's above-described November 16, 1981 letter and there was no assertion by Respondent at that time that the telephone numbers were confidential; that Respondent has a telephone number for each of its employees; that Respondent mails the employees' paychecks; that Respondent does not advise the Union of address changes of its employees; that the average educational level of Respondent's employees is 9 or 10 grade; and that while she did not recall Lavelle indicating on December 23 that he was going to file an unfair labor practice, she was aware that one was filed, she read it, and agreed that it involved telephone numbers; and that, nonetheless, after the December 23, 1981 meeting Respondent did not give the Union the telephone numbers, the addresses of its customers, or the hours of employment of the employees.

Employee Carle testified that Lavelle, at the December 23, 1981 meeting, asked for the telephone numbers of Respondent's customers and not its employees; that Lavelle on December 23 asked what the hours of work for bargaining unit employees were and "we told him it was like 5:00 p.m. to 10:00 p.m. It was like when you could catch all of the cleaners in that time"; and that while she was present throughout the December 23 meeting she did not hear Lavelle indicate that he was going to file an unfair labor practice charge with the Board over the fact that he was not being supplied with the telephone numbers, the jobsite locations, and the hours of work of the unit employees. Carle testified that she was present throughout the hearing herein, and that she recalled Catling's testimony given earlier that same day regarding how meeting notices are sent out. However, on cross-examination by Lavelle, she mistakenly testified that Catling had testified that the meeting notices were mailed from Columbus vis-a-vis Cleveland, Ohio, the Union's home office.

Twenty days after the above-described December 23 meeting Lavelle, after withdrawing the charge in Case 9-CA-17781, filed the charge herein alleging that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act in that it

> . . . since on or about *December 23, 1981*, and at all times thereafter, it, by its officers, agents, and representatives, has refused to bargain collectively with Service, Hospital, Nursing Home and Public Employees Union, Local 47, a labor organization chosen by a majority of its employees in an appropriate unit, for purpose of collective bargaining in respect to rates of pay, wages, hours of employ-

. . . the reasons for requesting the information was one; to track down grievance because it sure looked like people were underpaid and it looked like, in talking to Nancy Carle she didn't know she had insurance. The collective bargaining agreement provides for employer paid life and medical insurance for all regular full-time employees (those who work 23 hours a week) after their first 90 days of employment. Two; for the purpose of campaigning so that we could specifically talk to people to find out what had been said to them. And the third reason was to try and track down witnesses on some of the unfair labor practice cases we had to withdraw because we couldn't get people to testify.

ment, and other terms and conditions of employment, by failing to supply said labor organization with information relevant to its performance as bargaining agent, to wit: hours of employment and job locations of employees in the bargaining unit. [Emphasis added.]

The Union mailed the following (dated February 1, 1982) to all of Respondent's employees in the unit:

TO: ALL COLUMBUS MAINTENANCE EMPLOYEES

I know you have all heard a lot of talk about the decertification election being held on February 10, 1982, and all the reasons you should vote against being represented by the Union.

The matter not being discussed is that there is more to this than simply not paying dues.

We will be holding a meeting to address these issues before the election so you will know exactly what your vote means to you, now and in the future. MEETING WILL BE HELD—

DATE: SATURDAY, FEBRUARY 6, 1982
TIME: 12:00 Noon
PLACE: HOLIDAY INN - 175 E. Town Street, Columbus, Ohio

ALL ELIGIBLE VOTERS SHOULD BE IN ATTENDANCE WHETHER OR NOT THEY PAY DUES.

Fraternally yours,
William Catling
Business Representative

Catling, who conducted the February 6 meeting, testified that three employees, all of whom were dues-checkoff accounts, attended this meeting. Carle testified that she attended the meeting and "approximately 15, not more than 20" of Respondent's employees were present.

To the extent their testimony conflicts with that of Lavelle and Catling, the testimony of Harper and Carle is not credited. Lavelle, the first witness to testify, pointed out on cross-examination that it would have made no sense for him to request Respondent's customer's telephone numbers at the December 23 meeting. Later Harper and Carle testified that that is exactly what Lavelle did. There is no question but that Lavelle asked for telephone numbers during the meeting; the only question is which telephone numbers did he ask for. Prior objective evidence, the November 16, 1981 letter from the Union to Respondent, demonstrates that the Union wanted the employees' telephone numbers. Up to the December 23 meeting, there is no assertion that the Union sought customers' telephone numbers. Contrary to the import of Harper's and Carle's testimony, Lavelle did not have sufficient information to obtain the customers' telephone numbers by using the telephone directory since Lavelle was not given the street addresses for all the Respondent's customers. Respondent, however, did give the Union the names and addresses of all its employees. That Lavelle would seek the customers' telephone numbers flies in the face of common sense. Respondent's employees are at the customers' facilities after business hours. Consequently, if the Union tried to contact unit employees by telephone at the customers' facilities, there would be no business personnel present to answer the phones. It would be highly unlikely, that a guard, if one were present, would answer the business phone and then put a janitor on the line. In those situations where a guard was not present, it is just as unlikely that unit employees would be answering the customers' business phone. Lavelle asked for phone numbers. Harper and Carle could not deny this. Their attempt to mischaracterize what telephone numbers he asked for must fail. Lavelle asked for the employees' telephone numbers on December 23.

It was demonstrated by Lavelle during his cross-examination of Carle that while she claimed to be able to recall what was said during a 7-hour meeting which occurred almost 1 year before she testified herein, she could not accurately restate something testified to in her presence just hours before she testified.

Both Harper and Carle testified herein that Lavelle did not indicate on December 23, 1981, that he would file a charge because Respondent would not provide the information he sought. As described above, there is objective evidence that Lavelle did in fact subsequently file such a charge. But for Harper and Carle to concede that Lavelle made such a statement would be an admission that he unsuccessfully sought the information during the December 23, 1981 meeting. Harper and Carle were put in the position, both with respect to what telephone numbers Lavelle sought on December 23, 1981, and whether Lavelle indicated a charge would be filed, of either conceding the obvious and undermining Respondent's case or asserting the absurd in the hope of avoiding such a fate. They chose the latter. Their challenged testimony cannot be credited.

The election was held on February 10, 1982. As indicated by the tally of ballots (Jt. Exh. 3(f)), 27 votes were cast for the Union, 87 votes were cast against the Union, and there was 1 challenged ballot.

B. *Contentions*

Citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), the General Counsel argues, on brief, that a bargaining representative is entitled to information requested from an employer concerning unit employees if there is a probability that the desired information is relevant to the union in carrying out its statutory duties and responsibilities, and that, as concluded in *Edward Z. Holmes Detective Bureau*, 256 NLRB 824 (1981), information about wages, hours, and working conditions, such as the Union's request for the hours of work for bargaining unit employees and the addresses of jobsites of such employees, is clearly relevant. *K & K Transportation Corp.*, 254 NLRB 722 (1981), General Counsel points out, stands for the proposition that, where a union demonstrates the reasonable necessity for contacting employees by telephone, the employer must furnish the union with employees' telephone numbers. And, the General Counsel argues, even though employees' telephone numbers may have been available through the telephone directory, the Board has held that a union's right to information does

not depend on whether it might have been able to acquire the information by other means. *Bel-Air Bowl, Inc.*, 247 NLRB 6 (1980).

On brief, Respondent contends that the unfair labor practice charge should be dismissed because it furnished the Union with its employees' names and addresses on December 16, 1981; that a union's bare assertion that it needs information to process grievances does not automatically obligate the employer to supply all the information in the manner requested, *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); that a union is required to show the precise relevance of the information requested if effective employer rebuttal comes forth. Id., *NLRB v. A. S. Abell Co.*, 624 F.2d 506, 510 (4th Cir. 1980); that there is no Board precedent which requires an employer to furnish employee telephone numbers to a union where the mail is clearly the most reasonable means of communicating with employees; that the Union did not request employees' telephone numbers on December 23, 1981; that the Union never requested specific addresses of jobsites where bargaining unit employees on December 23, 1981; that several courts of appeal have held that doubt is cast on the union's good-faith need or desire for information when unfair labor practice charges are filed without any effort to pursue the information request with a company, *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1098 (1st Cir. 1981); *Emeryville Research Center v. NLRB*, 441 F.2d 880 (9th Cir. 1971); see also *Kroger Co. v. NLRB*, 399 F.2d 455 at 459 (6th Cir. 1968); that the Union is required to afford an employer an opportunity to provide the data on mutually satisfactory terms, before the employer's refusal to supply such information can be held to be an unfair labor practice. *Soule Glass & Glazing Co.*, supra at 1099, and, therefore, even assuming arguendo that the Union made a general request for this information, its failure to pursue the matter and be more specific is sufficient to defeat its unfair labor practice charge; that the Union's attorney did not threaten to file an unfair labor practice charge on December 23, 1981; that the Union's objection that the information requested was necessary to enable it to contact unit employees to campaign effectively and that the addresses of unit employees furnished in accordance with the requirements of *Excelsior Underwear*, and *NLRB v. Wyman-Gordon Co.*, supra, was inadequate to allow effective campaign contact due to the marginal literacy of many unit employees is without merit since there was no evidence produced during the hearing that even remotely indicated the marginal literacy of any bargaining unit employee; and there was simply no evidence presented by the Union that it was unable to effectively campaign during the election because of the marginal literacy of any unit employees, or the inability to contact employees because of the unavailability of employee telephone numbers, hours of work or jobsite addresses, and, therefore, the Union's objection concerning an inability to effectively campaign is without merit and should be dismissed.

C. *Analysis*

In my opinion, for the reasons set forth below, Respondent violated Section 8(a)(1) and (5) of the Act in the manner set forth in the amended complaint described above. Considered in terms of background, it is noted that the Union requested the names and addresses of unit employees from Respondent in February 1981. As conceded by Respondent's vice president, this request was ignored. Again on November 16, 1981, the Union requested such information, in addition to employees' telephone numbers. When the information was not supplied, the Union filed a charge. Only then did the Respondent comply with the request, and even then it supplied neither the employees' telephone numbers nor a specific explanation for its noncompliance to this extent. There is no question but that the Union was entitled to the names and addresses of unit employees. And the General Counsel cites authority, *K & K Transportation Corp.*, supra, for the proposition that where a union demonstrates the reasonable necessity for contacting employees by telephone, the employer must furnish the union with employees' telephone numbers. As conceded by Respondent in its brief, "many of the . . . Respondent's employees work at another job full time during the day and part time with . . . Respondent at night." In these circumstances the Union should not be denied the opportunity to personally contact unit members so as to be able to fulfill its obligations as the collective-bargaining representative of unit members. An employer cannot refuse to provide relevant information and, thereby, in effect preclude personal contact by the Union with unit members. While the mail is normally a reasonable means of communication, here, in my opinion, it has been demonstrated that there was a need for the Union to contact unit members by telephone. By precluding personal contact by reasonable means, Respondent denied the Union the opportunity to carry out its statutory duties and obligations, and perform its functions as the exclusive collective-bargaining representative of the involved unit members. With respect to campaigning, but for the Respondent's flagrant disregard of the Union's representative status, the Union would have been placed on notice that Respondent employed almost six times the number of employees the Union knew about. Withholding the names and addresses requested November 16, 1981, until after a charge was filed, especially in view of the fact that a decertification petition had been filed, was unconscionable. The Union should have been given the opportunity to contact unit members by telephone in view of the following: (a) the number of "recently discovered employees," (b) the fact that many of the unit members held two jobs, (c) the fact that unit members did not work at one or a few locations, (d) the fact that the Union did not know the specific working hours of unit members, (e) the fact that the Union did not have the specific jobsite locations for all unit members, and (f) the timing involved. For the reasons set forth above, both the Union and Respondent knew that the former would not be able to contact many of the unit members by utilizing the list of names and addresses Respondent supplied and a telephone directory. Moreover, as pointed out by the General Counsel, the Union was not under a legal obligation to first attempt this approach. Respondent did not indicate that it was willing to reach some kind of an accommodation. Respondent simply supplied neither the numbers nor a spe-

cific explanation. Respondent's belated confidentiality and company policy assertions cannot be given any weight.

Respondent's operation does not involve the use of employees at only one facility where the Union would have an opportunity for personal contact before or after work. Rather, its employees work at numerous jobsites throughout the Columbus area, and the employees' starting and quitting times vary as described above. Again, Respondent frustrated any attempt by the Union to have personal contact with unit members by refusing to give the Union all of the specific jobsite locations and the starting and quitting times of the employees. The list of customers, along with employee names, dealt with at the December 23, 1981 meeting (Jt. Exh. 3(d)(3)), was utilized to determine eligibility. Admittedly, certain jobsite locations could be determined from the list, but the list was not meant to nor does it comply with the request for all jobsite locations. And even to the extent a jobsite location could be determined from the list, the Union would still need the starting and quitting time of the unit member working at that location to be able to, in a reasonable fashion, have personal contact. The collective-bargaining agreement between the Union and Respondent was in effect at that time. By refusing to provide the Union with the telephone numbers and the hours of work of bargaining unit employees and the addresses of jobsites where they performed work, Respondent violated Section 8(a)(1) and (5) of the Act.

THE OBJECTION

The Union's objection to the election is based on the above-described conduct which has been found to be unlawful. The conduct was not trivial; it goes to the heart of the Union's representative status. By withholding the requested information, Respondent effectively denied the Union the opportunity to represent unit members. By withholding the requested information, Respondent, in the circumstances of this case, denied the Union the opportunity to campaign effectively. In my opinion, Respondent interfered with the exercise of a free choice in the election.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Union pursuant to its written request of November 16, 1981, and its oral request of December 23, 1981, with the telephone numbers, hours of employment, and job locations of employees in the bargaining unit.
4. Respondent engaged in conduct which interfered in the free choice of employees in the Board-conducted election.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be required to cease and desist therefrom, and take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Respondent engaged in conduct which interfered with the election in Case 9-RD-1042, I recommended that the election be set aside.

On the basis of the entire record and the findings of fact and conclusions of law, I issue the following recommended[9]

ORDER

The Respondent, Columbus Maintenance and Service Co., Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the above-named Union by refusing to provide said Union, upon request, with a list of telephone numbers, hours of employment, and job locations of employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of any right guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Upon request, provide to the aforementioned Union the names and addresses of current unit members along with their telephone numbers, hours of employment, and their specific job locations.

(b) Post at its place of business in Columbus, Ohio, copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material. In view of the nature of the involved employment, copies of the notice shall be mailed to all current unit members and individuals who were determined to be unit members eligible to vote in the above-described election.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Service, Hospital, Nursing Home and Public Employees International Union, Local 47, AFL–CIO–CLC, by failing and refusing to furnish the said labor organization with the information requested by the Union (a) in its letter to us on November 16, 1981, and (b) orally on December 23, 1981.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, on request, furnish the aforementioned Union, with reasonable promptness, information duly requested by it concerning current employees' names, addresses, telephone numbers working hours, and specific job locations.

COLUMBUS MAINTENANCE AND SERVICE CO., INC.